IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

MACA.No. 349 of 2003()

OPMV.1651/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY

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APPELLANT - PETITIONER

T.M.PRASANNA W/O. SADANANDAN,
DEEPAM HOUSE, PALAYODU, P.O.KEEZHALLUR,
ANJARAKKANDY.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS: RESPONDENTS

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1. SREEJITH S/O. RAGHAVAN,
KARAYIL HOUSE, MAMBA P.O., ANJARAKKANDY.

2. V.K.RAVEENDRAN, SOMA ROAD WAYS,
MAMBA P.O., ANJARAKKANDY.

3. THE UNITED INDIA INSURANCE CO.LTD.,
KANNUR.

BY ADV. SRI.MATHEWS JACOB
SRI.T.ANUP JOACHIM
SRI.C.K.SREEJITH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO.349 OF 2003

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Dated this the 22nd day of June, 2007

J U D G M E N T

Petitioner in O.P(MV) No.1651 of 1998 on the file of the Motor Accidents Claims Tribunal, Thalassery is the appellant. Appeal is filed against the award passed by the Tribunal dismissing the petition filed by the petitioner claiming compensation.

2. Petitioner filed the O.P. claiming a compensation of Rs.10,000/- alleging that she sustained injuries in a road traffic accident involving a state carriage bus bearing Reg. No.KL-13/A-1809. It was alleged that petitioner was travelling in that bus and when the vehicle reached Cheriyavalappu it went off the road, hit on an electric post and she sustained injuries. Tribunal found that the negligence alleged was not proved and dismissed the O.P. Challenging that finding of the Tribunal, this appeal is filed.

3. According to the petitioner she sustained injuries in a motor vehicle accident which took place on 23.4.1995

involving a stage carriage bus bearing Reg.No.KL-13/A-1809. Owner and driver of the vehicle did not appear and contest the case. Insurer alone contested the case. It was contended that there was no negligence on the part of the driver and it was an inevitable accident. It was also contended that the appellant has sustained only minor injuries.

4. Petitioner produced Exhibit A1, copy of the award passed by the very same Tribunal in respect of the same accident in which it was found that the accident occurred due to the negligence of the driver of the vehicle. Tribunal, without assigning any proper reason, refused to accept the finding in the award passed by it. The finding of the Tribunal that the petitioner failed to establish that she sustained injuries in an accident involving stage carriage bus KL-13/A-1809 is unsustainable. I set aside the same and hold that accident occurred due to the negligence of the driver of the bus and the petitioner sustained injuries in the accident. Exhibit A2 is the copy of the wound certificate which shows that petitioner sustained a lacerated wound of 3x0.5 cms. at scalp temporal region. She was treated as an outpatient.

Considering the fact that the petitioner sustained the injuries, I am of the view that the Tribunal ought to have awarded a sum of Rs.5,000/- as compensation, covering all heads.

In the result, the appeal is allowed in part. Award passed by the Tribunal dismissing the Original Petition is set aside. An award is passed allowing the appellant to recover a sum of Rs.5,000/- as compensation under all heads with 7% interest from the date of petition till date of realisation. The Third respondent-Insurer is directed to deposit the said amount and on deposit, the appellant can withdraw the same. Court fee, if any, due from the appellant shall be realised.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO.349 OF 2003

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J U D G M E N T

22ND JUNE, 2007